

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK BECKER AND DEBORAH BECKER	:	CIVIL ACTION
	:	
v.	:	
	:	
CLUB MED SALES, INC., et al.	:	NO. 97-CV-108

M E M O R A N D U M

Ludwig, J.

September 30, 1998

Until today, it was my view, as conveyed to you on September 25, that under the Mexican Civil Code pain and suffering were compensable damages in a personal injury action. The reason was that such items appear to be aspects of what the Code refers to as "moral" damages. As to the measure of damages for pain and suffering, however, there appeared to be an unwritten rule that the amount could not exceed the amount of special or tangible damages – i.e., the total was limited to twice specials. Unfortunately, we have found no authority on this point.

It has now been called to my attention that "moral" damages may be restricted to cases of "wrongful conduct," such as a criminal or statutory violation. We are continuing to research this issue.

Given the concerns over whether this case economically warrants extensive litigation, it seemed advisable to communicate with you as soon as practicable. What at first appeared to be a simple question has turned out to be a difficult conundrum. We consulted an attorney in Dallas and a professor of law at the University of Monterrey, in Mexico, who co-wrote an authoritative

article on the subject. We have received conflicting information from a judge in San Diego. At this point, it may behoove both sides to attempt to reach a settlement. In any event, even if pain and suffering is recoverable, it appears that the amount of the recovery, as noted above, would be "capped." This is just one of several uncertainties.

Edmund V. Ludwig, J.